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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

BLENDTEC INC., a Utah corporation,

Plaintiff,

vs.

BLENDJET INC., a Delaware corporation,

Defendant.

**BLENDTEC’S MOTION TO COMPEL
BLENDJET TO PRODUCE
DOCUMENTS RESPONSIVE TO
REQUEST FOR PRODUCTION NOS.
41, 42 (BLENDJET’S QUALITY
ISSUES)**

Civil No. 2:21-cv-00668-TC-DBP

Judge Tena Campbell

Magistrate Judge Dustin B. Pead

Blendjet’s concerted effort to thwart discovery continues. Blendjet refuses to produce documents responsive to RFPs 41-42 relating to Blendjet product quality issues. *See Exhibit 1* (Requests); *Exhibit 2* (Responses). On February 17 (2:30) counsel conferred telephonically (Blendtec: Brett Foster and Tammy Kapaloski) (Blendjet: Patrick McGill and Jesse Salen). Blendjet indicated that notwithstanding relevance objections it would consider production if

Blendtec narrowed the scope, which Blendtec did, but Blendjet still refuses production. *See Exhibit 3* (Post-Meet and Confer Email).

As narrowed, Blendtec seeks:

- RFP 41: Produce all customer service emails or tickets related to quality issues, defects, or complaints in connection with the Blendjet Blender since 2017.
- RFP 42: Documents sufficient to identify the number and nature of warranty claims made in relation to Blendjet Blenders from 2017 to the present.

Blendjet served reciprocal requests to Blendtec on both quality and warranty issues, and Blendtec agreed to produce such information. *See Exhibit 4* at RFPs 47-48.

As to Blendjet's relevance objections, discovery "should be considered relevant if there is any possibility the information sought may be relevant to a parties claim or defense." *Alcon Vision v. Lens.com*, 2022 WL 3212309, at *3 (D. Utah 2020). "Discovery should be allowed unless it is clear that the information can have no possible bearing...." *VeroBlue Farms v. Wulf*, 2020 WL 2817612, *4 (D. Kan. 2020) (emphasis original).

The requested documents are relevant: **First**, quality of the infringing Blendjet blenders is relevant to likelihood of confusion in two ways: "(1) an inferior product may cause injury to the plaintiff trademark owner because people may think that the senior and junior products came from the same source; or (2) products of equal quality may tend to create confusion as to source because of this very similarity". *Hormel Foods Corp. v. Jim Henson Productions, Inc.*, 73 F.3d 497, 505 (2nd Cir. 1996). **Second**, evidence of "reputational harm and loss of goodwill" is relevant to "the issuance of injunctive relief in trademark cases." *Bodylogicmd Franchise Corp. v. Bodylifemd LLC*, 2013 WL 12090203, at *2 (S.D. Fla. 2013). **Third**, reputational harm is relevant to damages. *Sky Dive Arizona, Inc. v. Quattrocchi*, 673 F.3d 1105, 1113 (9th Cir. 2012) (affirming damages

for corrective advertising in a Lanham Act case given “the widespread harm to [plaintiff’s] good will.”). Blendjet’s relevance objection is meritless.

Blendjet’s claim that these requests are overly broad and burdensome, only suggests that Blendjet likely has a massive amount of documents relating to quality issues with Blendjet blenders, which should be produced give the highly relevant nature of this evidence.

Finally, what’s good for the goose is good for the gander. Blendjet has asked Blendtec reciprocal requests on both the quality and warranty issues, and Blendtec has agreed to produce such information. *See Exhibit 4* at RFPs 47-48 (Blendtec’s Responses to Reciprocal Requests). Blendjet’s request for the same information makes its objections gormless.

Blendjet’s improper discovery tactics must be stopped. Blendjet should be ordered to produce responsive documents, and pay Blendtec’s attorneys fees.

DATED this 23rd day of February, 2023.

DORSEY & WHITNEY LLP

/s/ Tamara L. Kapaloski

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CERTIFICATE OF SERVICE

I hereby certify that on the 23rd day of February, 2023, a true and correct copy of the foregoing document was served on counsel of record via the Courts CM/ECF System which sent notice to counsel of record:

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